

debtors, holding in their hands as security for the debt, and their indemnity, the mortgage upon the vessel.

With what propriety, then, can they or their assignees, representing their general creditors, say that the holders of these bills, for whose security the arrangement was made, shall participate with them in the loss resulting from a sale of the vessel for less than the amount which the complainant stipulated to pay for her. Though Whittington & Snyder were to be indemnified for their risk in accepting the bills, they certainly were to indemnify the holders of them; and one of the instruments of indemnity was the mortgage upon the vessel, executed to them by the vendor Applegarth.

Suppose Whittington & Snyder had made no payment on the bills, but had other claims against the drawer; and the contest was between their assignees, representing their general creditors, and the holders; could there be a doubt in that case, that the proceeds of the sales would be awarded to the holders of the bills? But why so? why simply and exclusively because the mortgage to Whittington & Snyder was for their benefit, as the holders of the claims intended to be secured by it. But if the court in the case supposed, would award the proceeds to the parties holding the bills, in preference to the general creditors of Whittington & Snyder, why shall they not have the same preference, notwithstanding the partial payment made by those persons? They are, it is true, in respect of such partial payment, creditors of the fund; but their claim upon it, or to be indemnified out of it, is subordinate to the claim of the holders of the bills, and must give way until they are satisfied in full. Such being my opinion, I shall pass an order ratifying the account of the Auditor, of the 3d instant, which is stated upon this view of the relative rights of the parties.

---

[No appeal was taken from this order.]